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PAGE 01 OECD P 03095 01 OF 07 310034Z

63

ACTION EUR-12

INFO OCT-01 ISO-00 AID-05 CEA-01 CIAE-00 COME-00 EB-07

EA-07 FRB-03 INR-07 IO-11 NEA-10 NSAE-00 OPIC-03

SP-02 TRSE-00 CIEP-01 LAB-04 SIL-01 OMB-01 STR-04 L-03

H-02 PA-01 PRS-01 USIA-06 OIC-02 OES-03 /098 W

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R 310056Z JAN 76

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PASS: EB FOR BOEKER, L FOR FELDMAN, TREASURY FOR
LANGE, JUSTICE FOR DAVIDOW, COMMERCE FOR ARRILL, CIEP
FOR GRANFIELD

E.O. 11652: N/A

TAGS: EINV, EFIN, OECD

SUBJECT: COMMITTEE ON INTERNATIONAL INVESTMENT AND
MULTINATIONAL ENTERPRISES (CIME), MEETING JANUARY 28-
29, 1976

REFS: (A) IME (76)1, (B) IME (76)2, (C) IME (76)3,
(D) IME (76)4, (E) IME (75) 19 (1ST REVISION), (F) IME
(75) 23

1. SUMMARY: CIME SESSION ON JANUARY 28, 29 TOOK SOME
TORTUOUS STEPS FORWARD ON GUIDELINES FOR MULTINATIONAL
ENTERPRISES (MNE'S) (REFDOC A) AND ALL BUT SETTLED
INTERGOVERNMENTAL UNDERTAKING ON NATIONAL TREATMENT
(REFDOC B). NEVERTHELESS, WEEK OF DISCUSSIONS OF KEY
DELEGATION HEADS IN BONN AND OF FULL CIME IN PARIS
LEFT THREE HARD ISSUES UNRESOLVED: DISCLOSURE PROV-
ISION UNDER MNE GUIDELINES WHERE MOST DELS CONTINUE
TO PRESS FOR SOME OPTIONAL REFERENCE TO DISCLOSURE
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PAGE 02 OECD P 03095 01 OF 07 310034Z

ON COUNTRY BASIS IN SOME CIRCUMSTANCES; CONSULTATION

PROVISION WHERE THE SWEDES FOUGHT ON ALONE FOR INDEPENDENT REPRESENTATION OF COMPANIES; AND THE INVESTMENT INCENTIVES/DISINCENTIVES UNDERTAKING, WHERE THE FRENCH FEAR US MOTIVES. FINAL RESOLUTION OF THESE ISSUES NOW UNLIKELY UNTIL MARCH OR APRIL, AFTER LIMA MEETING OF UN COMMISSION ON MNE'S. PROGRESS WAS MADE ON MOST OF LESSER ISSUES IN THE MNE GUIDELINES, PARTICULARLY IN RBP SECTION. FURTHER LESSER DRAFTING CHANGES IN GUIDELINES LEFT TO DRAFTING GROUP. DRAFTING GROUP WILL MEET TO DISCUSS DRAFTING QUESTIONS (DESCRIBED BELOW) ON FEBRUARY 16-17 (WITH OPENING SESSION FEBRUARY 16 BEGINNING AT 9AM). THIS DISCUSSION LIMITED BY CHAIRMAN TO THOSE DRAFTING CHANGES TO MNE GUIDELINES AGREED BY CIME AND THOSE SUBMITTED IN WRITING IN ADVANCE OF DRAFTING GROUP MEETING. CIME ITSELF WILL MEET MARCH 18 AND 19 (POSSIBLY EXTENDING TO 20TH) TO CONSIDER MAJOR OUTSTANDING ISSUES. STILL APPEARS THAT ALL MAIN US OBJECTIVES CAN BE ACHIEVED EXCEPT FOR OUR OPTIMUM POSITION ON INFORMATION DISCLOSURE. USDEL BELIEVES WE MAY HAVE TO INCLUDE SOME REFERENCE TO OPTIONAL DISCLOSURE OF OPERATING RESULTS AND MAJOR NEW INVESTMENT IN ONE OR MORE MAJOR COUNTRIES IN ADDITION TO GENERAL GEOGRAPHIC AND AREA BREAKDOWN, AS PRICE OF NAILING DOWN REST OF OUR POINTS. INTEND TO DISCUSS THIS ISSUE IN WASHINGTON WITH APPROPRIATE ADVISORS TO GET INDUSTRY REACTION.END SUMMARY

INTRODUCTION

2. MEETING BEGAN WITH DISCUSSION OF MNE GUIDELINES (REFDOC A), TAKING EACH SECTION IN ORDER OF APPEARANCE. MOST IMPORTANT CHANGE OCCURRED IN PARA 8 OF INTRODUCTION (AND IN TRANSITIONAL PARAGRAPH). UK DEL SUGGESTED REDRAFTING OF LAST SENTENCE OF PARA 8, AS FOLLOWS: BEGIN TEXT: THE GUIDELINES ARE ADDRESSED TO THE VARIOUS ENTITIES WITHIN THE MULTINATIONAL ENTERPRISE ACCORDING TO THE ACTUAL DISTRIBUTION OF RESPONSIBILITIES BETWEEN THEM, ON THE UNDERSTANDING THAT THEY WILL COOPERATE AND LIMITED OFFICIAL USE

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PAGE 03 OECD P 03095 01 OF 07 310034Z

PROVIDE ASSISTANCE TO ONE ANOTHER AS NECESSARY TO FACILITATE COMPLIANCE WITH THE GUIDELINES. THE WORD "ENTERPRISE" AS USED IN THESE GUIDELINES REFERS TO THESE VARIOUS ENTITIES, IN ACCORDANCE WITH THEIR RESPONSIBILITIES. END TEXT. US DEL (BOEKER) POINTED OUT THAT WORDS "AS NECESSARY" MIGHT MORE ACCURATELY BE PLACED TO FOLLOW "ON THE UNDERSTANDING THAT THEY WILL..." IT WAS DECIDED THAT

UK AND US WOULD SETTLE THIS MINOR ISSUE BETWEEN THEM. UK ALSO INDICATED THAT AS CONSEQUENCE OF SECOND SENTENCE OF ABOVE UK SUGGESTION, THE WORDS IN SQUARE BRACKETS IN THE TRANSITIONAL PARAGRAPH SHOULD BE DELETED. USDEL AND MOST OF CIME (SWEDEN, FRG, CANADA, JAPAN) GAVE GENERAL APPROVAL TO THIS

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PAGE 01 OECD P 03095 02 OF 07 310026Z

63

ACTION EUR-12

INFO OCT-01 ISO-00 AID-05 CEA-01 CIAE-00 COME-00 EB-07

EA-07 FRB-03 INR-07 IO-11 NEA-10 NSAE-00 OPIC-03

SP-02 TRSE-00 CIEP-01 LAB-04 SIL-01 OMB-01 STR-04 L-03

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R 310056Z JAN 76

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APPROACH.

3. NORWEGIAN DEL HAD QUESTIONS REGARDING ADDITIONS TO PARA 9 REGARDING NON-DISCRIMINATORY NATURE OF THE DOCUMENT. US DEL EXPLAINED THAT EXPECTATIONS FOR MNE BEHAVIOR AND FOR NATIONAL ENTERPRISE BEHAVIOR WOULD BE SAME WHERE THEY COULD BE APPLICABLE TO BOTH. US DEL INDICATED THIS SECTION AS IT STOOD WAS IMPORTANT TO US, AND WE WOULD BE UNWILLING TO CHANGE THIS SENTENCE WITHOUT CHANGING REST OF PARAGRAPH AS WELL. NORWEGIAN DEL AGREED TO REFLECT ON THIS FURTHER, AND ESTABLISH BILATERAL CONTACTS IF NECESSARY.

GENERAL POLICIES

4. NORWEGIAN DEL OBJECTED TO PARA (3) ON BASIS IT MAY BE STEP BACKWARD, I.E. THAT THE PHRASING MAY BE WEAK AND LEAVE TOO MUCH LEEWAY TO ENTERPRISES REGARDING LIMITS OF BUSINESS CONFIDENTIALITY. US DEL EMPHASIZED THAT LAW REGARDING BUSINESS LIMITED OFFICIAL USE

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PAGE 02 OECD P 03095 02 OF 07 310026Z

CONFIDENTIALITY VARIES AMONG DIFFERENT COUNTRIES OF OECD, AND THAT THIS LANGUAGE, IF MADE STRONGER ACCORDING TO NORWEGIAN SUGGESTION, MIGHT RESULT IN A CONFLICT-OF-LAWS SITUATION. CHAIRMAN FINALLY SUGGESTED THAT NORWEGIANS PREPARE DRAFT FOR PARA 3, AND THAT THIS MATTER BE TAKEN UP FURTHER IN THE DRAFTING GROUP.

5. CANADIAN, DUTCH AND JAPANESE DELS EXPRESSED SOME DISSATISFACTION WITH PARA 4 (REFDOC A) ON NON-DISCRIMINATION IN EMPLOYMENT AS CONFLICTING WITH SOME NATIONAL LAWS. BOTH BELIEVED THAT PARAS 4 AND 5 AS THEY APPEARED IN REFDOC (E) WERE PREFERABLE (BECAUSE THEY STATED MORE CLEARLY THE RESPONSIBILITIES OF MNE'S). US PROPOSED, WITH GENERAL SUPPORT THAT NEW PARA 4 READ: BEGIN TEXT: INSOFAR AS PERMITTED BY LAW, NOT DISCRIMINATE ON THE BASIS OF NATIONALITY IN FILLING RESPONSIBLE POSTS IN EACH -COUNTRY OF OPERATION. END TEXT AT UK, DUTCH, NORWEGIAN INSISTENCE, CIME AGREED TO REINSERT INTO NEW TEXT NOTION OF FORMER BLAND PARAGRAPH 4 (REFDOC E) ON CONTACTS WITH THE LOCAL COMMUNITY. IT WAS ALSO AGREED TO BEGIN PARA 6 ON POLITICAL CONTRIBUTIONS WITH PHRASE "EXCEPT AS PERMITTED BY LAW, NOT MAKE CONTRIBUTIONS..."

DISCLOSURE OF INFORMATION

6. ALTHOUGH IT HAD APPEARED THAT COMPROMISE HAD BEEN ARRIVED AT WITH REGARD TO GEOGRAPHICAL BREAKDOWN OF DATA BASED ESSENTIALLY ON US PROPOSED REGIONAL APPROACH, THIS DID NOT TURN OUT TO BE THE CASE. CERTAIN DELEGATIONS THAT HAD SEEMINGLY AGREED TO THIS COMPROMISE RETREATED FROM THEIR PREVIOUS POSITION AND ONCE AGAIN INSISTED ON COUNTRY-BY-COUNTRY BREAKDOWNS. US REITERATED THAT THIS WAS UNACCEPTABLE. STALEMATE CONTINUED WITH ONLY UK INDICATING FLEXIBILITY BY SUGGESTING THAT FIRMS BE ALLOWED VOLUNTARILY TO PUBLISH ON MORE DETAILED BASIS THAN REGIONAL BREAKDOWNS. HOWEVER, NO FINAL RESOLUTION WAS REACHED. CHAIR INSTRUCTED EACH DELEGATION TO GO BACK TO ITS PRINCIPALS, WITH VIEW TOWARD REACHING ULTIMATE COMPRO-

MISE.

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PAGE 03 OECD P 03095 02 OF 07 310026Z

7. FINAL COMPROMISE IS LIKELY TO APPEAR IN EXPLANATORY FOOTNOTES RATHER THAN IN TEXT. HOWEVER, EXACT FORMULATION OF SUCH COMPROMISE IS NOT YET EVIDENT. CHAIRMAN, WITH VERY BROAD SUPPORT, PROPOSED INSERTING IN FOOTNOTE NOTION THAT GEOGRAPHIC AREA COULD UNDER SOME CIRCUMSTANCES MEAN COUNTRY AS WELL AS GROUPS OF COUNTRIES. US DEL OPPOSED ANY REFERENCE TO COUNTRY DISCLOSURE. AT END OF DISCUSSION, CHAIR SUMMARIZED DISCUSSION AND MADE FOLLOWING OBSERVATIONS:

A) IT SEEMS TO MAKE SENSE TO MERGE FIRST TWO INTRODUCTORY PARAGRAPHS OF THIS SECTION;

B) DESPITE SOME SUPPORT FOR DEFINING PHRASE, "HAVING DUE REGARD TO THE NATURE AND SIZE OF THE ENTERPRISE," THIS WAS NOT PRACTICAL AND COULD LEAD TO FURTHER DIFFICULTIES;

C) SECTION 2 (III) SHOULD BE FURTHER CLARIFIED;

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PAGE 01 OECD P 03095 03 OF 07 310036Z

63

ACTION EUR-12

INFO OCT-01 ISO-00 AID-05 CEA-01 CIAE-00 COME-00 EB-07

EA-07 FRB-03 INR-07 IO-11 NEA-10 NSAE-00 OPIC-03

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H-02 PA-01 PRS-01 USIA-06 OIC-02 OES-03 /098 W

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R 310056Z JAN 76
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LIMITED OFFICIAL USE SECTION 03 OF 07 OECD PARIS 03095

D) SECTION 2 (VIII) COULD REMAIN AS IS WITH
THE CLEAR UNDERSTANDING THAT "ARMS LENGTH"
WAS SUFFICIENT RESPONSE.

8. INTQS OF CHANGES IN TEXT PRESENTED IN REFDOC
(A), THERE WERE CLARIFYING AS WELL AS LIMITING CHANGES.
TO MAKE IT CLEAR THAT COMPANIES BASED IN COUNTRIES
WITH NO DISCLOSURE LAWS SHOULD MEET SAME STANDARDS
AS OTHERS, FIRST PARAGRAPH WAS AMENDED AS FOLLOWS:
BEGIN TEXT: PUBLISH IN A FORM SUITED TO IMPROVE
PUBLIC UNDERSTANDING A SUFFICIENT BODY OF FACTUAL
INFORMATION FOR THE ENTERPRISE AS A WHOLE ON ITS
STRUCTURE, ACTIVITIES AND POLICIES SUPPLEMENTING SO
FAR AS NECESSARY FOR THIS PURPOSE INFORMATION DISCLOSED
UNDER NATIONAL LAW OF THE INDIVIDUAL COUNTRIES IN
WHICH THEY OPERATE. END TEXT SWISS ALSO PROPOSED,
WITH GENERAL SUPPORT, THAT LEAD-IN CHAPEAU OF PARA 2
BE MOVED TO BEGINNING OF SECTION.

9. CERTAIN PROVISIONS UNDER PARA 2 WERE ALSO ELIMINATED
OR MODIFIED. SPECIFICALLY: 2 (III) WAS NARROWED
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PAGE 02 OECD P 03095 03 OF 07 310036Z

TO READ "THE OPERATING RESULTS FOR SUCH GEOGRA-
PHICAL AREAS AND THE SALES AT THE MAJOR
LINES OF BUSINESS", THUS DROPPING PROFITS AND
SALES BY AREA AND OPERATING RESULTS BY LINE OF BUS-
INESS; 2 (VIII) TRANSFER PRICING POLICIES WAS
SUBJECT OF MUCH DISCUSSION. WITH SWISS VIRTUALLY
INSISTING ON DELETION, AND WITH US SUPPORT, ARGUING
THAT WHAT WOULD BE PRODUCED WOULD EITHER BE TOO
SIMPLE OR TOO COMPLICATED TO BE USEFUL. HOWEVER,
OTHER DELEGATIONS CONTINUE TO URGE RETENTION
EVEN THOUGH THEY COULD NOT DOCUMENT ITS VALUE. POINT
WAS LEFT UNRESOLVED.

RESTRICTIVE BUSINESS PRACTICES

10. DESPITE SOME RATHER SIGNIFICANT DOCUMENTATION
AND SUPPORT FROM US, SWISS PROPOSAL THAT PARA (2) ON
DISCRIMINATORY PRICING BE MERGED INTO PARA (1) AS PARA

1 (E) WAS FIRMLY REJECTED BY OTHER LEGATIONS
EVEN THOUGH THEY STATED NO SUBSTANTIVE GROUNDS FOR
THEIR STAND. THEREFORE, NO FINAL DECISION WAS
REACHED ON THIS PARAGRAPH REGARDING ITS ULTIMATE
PLACEMENT OR WHETHER SECOND HALF AFTER "COMPETITION"
SHOULD BE DELETED.

11. THE BRACKETED WORDS IN PARA 3 WERE DROPPED
WITH NO PLEDGE TO REINSTATE LANGUAGE ELSEWHERE,
VOME DELEGATIONS DESIRED.

12. NO FINAL DECISIONS WERE MADE ON PARAS (4) AND
(5), SINCE CHAIR AND OTHERS FELT THAT THEY WERE NOT
SUFFICIENTLY EXPERT IN THIS AREA OF RBP. HOWEVER,
US PROPOSED WITHOUT OPPOSITION ITS RECOMMENDED
CHANGES IN PARAS 4 AND 5.

13. IN PARA (4), US PROPOSED THAT "OR COOPERATING
WITH" BE CHANGED TO "OR OTHERWISE STRENGTHENING THE
RESTRICTIVE EFFECTS OF."

14. PARA (5) WAS CHANGED TO READ "BE REAP TO
CONSULT AND COOPERATE WITH COMPETENT AUTHORITIES OF
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PAGE 03 OECD P 03095 03 OF 07 310036Z

COUNTRIES WHOSE INTERESTS ARE DIRECTLY AFFECTED IN
REGARD TO COMPETITION ISSUES OR INVESTIGATIONS."

15. DELEGATIONS ARE TO RUN THESE CHANGES BY THEIR RBP
EXPERTS. BUT CHAIR SAID, IN ABSENCE OF OBJECTION,
NEXT DRAFTING GROUP SHOULD ADOPT THEM.
(GERMANS, SWEDES, UK, JAPAN, AGREED PRIVATELY TO
ACCEPT US CHANGES).

. FINANCING AND TRADE

16. PARA (2) OF THIS SECTION WAS DELETED. IN PARA (1),
GREEK DELEGATION HAD PROPOSED ADDING AFTER "INCLUDING,"
THE FOLLOWING: "THE SETTING OF PRICES FOR THE TRANSFER
OF GOODS AND SERVICES WITHIN THE ENTERPRICE." ALTHOUGH
SYMPATHY WAS EXPRESSED FOR GREEK CONCERNS, ALL OTHER
DELEGATIONS INDICATED IT WAS IMPRACTICAL STANDARD
TO BE APPLIED TO PRICING MECHANISM WHICH WAS ESS-
ENTIALLY TAX PROBLEM. GREEKS MADE IT CLEAR THEY
COULD NOT ENDORSE INVESTMENT PACKAGE WITHOUT RESPONSE
TO THEIR "PET" PROVISION. CHAIRMAN ELECTED US TO WORK
OUT A "GREEK PROPOSAL" THAT OTHERS COULD CONSIDER
FAVORABLY. USDEL SUGGESTED FOLLOWING TENTATIVE

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PAGE 01 OECD P 03095 04 OF 07 310101Z

63

ACTION EUR-12

INFO OCT-01 ISO-00 AID-05 CEA-01 CIAE-00 COME-00 EB-07

EA-07 FRB-03 INR-07 IO-11 NEA-10 NSAE-00 OPIC-03

SP-02 TRSE-00 CIEP-01 LAB-04 SIL-01 OMB-01 STR-04 L-03

H-02 PA-01 PRS-01 USIA-06 OIC-02 OES-03 /098 W

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R 310139Z JAN 76

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SUBSTITUTE LANGUAGE TO GREEKS: BEGIN TEXT: SHOULD NOT BY INTENTIONALLY UTILIZING TRANSFER PRICING POLICIES DIFFERING FROM THOSE WHICH ARE GENERALLY EMPLOYED, VIOLATE APPLICABLE EXCHANGE CONTROL REGULATIONS. END TEXT. GREEKS AND CHAIRMAN PRIVATELY ACCEPTED THIS, BUT GREEKS (OR US) ARE LEFT TO RAISE IT IN DRAFTING GROUP.

TAXATION

17. USDEL PROPOSED REVISED DRAFT OF TAX GUIDELINE BY INSERTING REFERENCE TO NATIONAL LAWS IN CHAPEAU TO THIS SECTION. ALSO MODIFIED PARA 2 BY INSERTING STATEMENT THAT TRANSFER PRICING SHOULD CONFORM TO "ARMS-LENGTH STANDARD." CHAIRMAN NOTED REFERENCE TO NATIONAL LAW ALREADY IN OTHER PARTS OF GUIDELINE, AND QUESTIONED NEED FOR REITERATION HERE. SUGGESTED NEW TEXT BE CONSIDERED IN DRAFTING GROUP. REVISED US TEXT AS FOLLOWS: BEGIN TEXT:

TAXATION

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PAGE 02 OECD P 03095 04 OF 07 310101Z

ENTERPRISES SHOULD IN ACCORDANCE WITH NATIONAL LAWS
AND REGULATIONS

(1) PROVIDE THE TAXATION AUTHORITIES OF EACH OF THE
COUNTRIES IN WHICH THEY OPERATE WITH THE INFORMATION
NECESSARY TO DETERMINE CORRECTLY THE TAXES TO BE
ASSESSED IN CONNECTION WITH SUCH OPERATIONS, INCLUDING
RELEVANT INFORMATION CONCERNING THEIR OPERATIONS IN
OTHER COUNTRIES;

(2) REFRAIN FROM MAKING USE OF THE PARTICULAR FACIL-
ITIES AVAILABLE TO THEM, SUCH AS TRANSFER PRICING,
WHICH DOES NOT CONFORM TO AN ARMS-LENGTH STANDARD,
FOR MODIFYING IN WAYS CONTRARY TO NATIONAL LAWS THE
TAX BASE ON WHICH MEMBERS OF THE GROUP ARE ASSESSED.
END TEXT

EMPLOYMENT AND INDUSTRIAL RELATIONS

18. CHAIRMAN NOTED THAT IME HAD TO RESOLVE
INFORMATION ISSUE RE COLLECTIVE BARGAINING (PARA 2
(B) AND QUESTION OF AUTHORIZED COLLECTIVE
BARGAINING AGENT (PARA 8). LABOR LAW ON INFORMATION
OF SOME MEMBER COUNTRIES REQUIRED ONLY SUCH INFORMATION
AS NEEDED FOR BARGAINING, WHEREAS OTHERS INSISTED
ON REFERENCE TO THEIR NATIONAL REQUIREMENTS FOR MORE
THAN THAT NEEDED FOR BARGAINING.

19. IN EFFORT TO BRIDGE DIFFERENCES IN REGARD TO
PARA 2 (B), UK DELEGATE PROPOSED FOLLOWING TEXT WHICH
ATTEMPTS TO COMBINE THE TWO ALTERNATIVES UNDER THIS
PARA AS FOUND IN REF DOC (A): BEGIN TEXT:

PROVIDE TO REPRESENTATIVES OF EMPLOYEES INFORMATION
WHICH IS RELEVANT TO AND NECESSARY FOR MEANINGFUL
NEGOTIATIONS ON CONDITIONS OF EMPLOYMENT AND,
WHERE THIS ACCORDS WITH LOCAL PRACTICE, WHICH
ENABLES THEM TO OBTAIN A TRUE AND FAIR VIEW OF
THE PERFORMANCE AND DEVELOPMENT OF THE ENTERPRISE.
END TEXT.

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PAGE 03 OECD P 03095 04 OF 07 310101Z

UK DELEGATE ALSO EXPRESSED WILLINGNESS TO ACCEPT
PARA 8 IF OTHER DELEGATIONS WOULD DO SO IN SPIRIT OF
COMPROMISE. SWEDISH DELEGATE STATED HE COULD ACCEPT

UK REVISION BUT NOTED THAT "ENTERPRISE" SHOULD BE MODIFIED TO INCLUDE THE WHOLE ENTERPRISE. GERMAN DELEGATE INDICATED UK DRAFT ACCEPTABLE BUT COULD ALSO LIVE WITH SECOND ALTERNATIVE OF OLD PARA 2(B). RECOMMENDED DELETION OF EITHER "RELEVANT TO" OR "NECESSARY FOR" AS ONLY ONE NEEDED. ALSO LINKED HIS ACCEPTANCE OF REVISED PARA 2 (B) TO RETENTION OF PARA 8 WITHOUT CHANGE.

20. US DEL INDICATED HE INTERPRETED "ENTERPRISE" IN UK DRAFT TO MEAN LOCAL AFFILIATE. IF THIS NOT TRUE, MODIFICATION NEEDED, SINCE, IF ENTIRE MNE IMPLIED, THIS COULD MEAN THAT REQUEST FOR DATA ON WHOLE ENTERPRISE COULD BE DEMANDED EVEN IF MNE HAD ONLY A SALES OFFICE. ONE MIGHT TOLERATE THIS IF REQUIRED BY LAW, BUT CERTAINLY NOT IF INDICATED ONLY BY "PRACTICES". THEREFORE, US ASKED FOR AMENDMENT TO READ "WHERE THIS ACCORDS WITH LOCAL LAW AND

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PAGE 01 OECD P 03095 05 OF 07 310120Z

63

ACTION EUR-12

INFO OCT-01 ISO-00 AID-05 CEA-01 CIAE-00 COME-00 EB-07

EA-07 FRB-03 INR-07 IO-11 NEA-10 NSAE-00 OPIC-03

SP-02 TRSE-00 CIEP-01 LAB-04 SIL-01 OMB-01 STR-04 L-03

H-02 PA-01 PRS-01 USIA-06 OIC-02 OES-03 /098 W

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R 310139Z JAN 76

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PRACTICE" WHICH UK "TEARFULLY" ACCEPTED. US DEL

QUESTIONED NEED FOR WORDS "RELEVANT TO" AND "TRUE AND FAIR". DRAFT MODIFIED TO INCLUDE INSERTION OF "LAW AND BEFORE "PRACTICE". AT END OF SENTENCE, WORDS "ENTITY OR WHERE APPROPRIATE, ENTERPRISE AS A WHOLE "SUBSTITUTED FOR WORD "ENTERPRISE". WITH THESE CHANGES US DEL INDICATED HE WOULD TRY TO "SELL" NEW TEXT. NETHERLANDS DEL ALSO ACCEPTED MODIFIED UK DRAFT. SUGGESTED CHANGES AND NEW TEXT THEN REFERRED BY CHAIRMAN TO DRAFTING GROUP.

21. IN DISCUSSIONS ON PARA 8, NETHERLANDS DELEGATE VOICED RESERVATION ON GROUNDS THAT IT PROHIBITED INTERNATIONAL COLLECTIVE BARGAINING; CHAIRMAN INTERJECTED THAT THIS NOT RULED OUT IF PERMITTED BY LOCAL PRACTICE, BUT NOTED THIS NOT CASE IN FRG. NORWEGIAN DEL OBJECTED TO PARA 8 ON GROUNDS IT WAS NOW TOO NARROW; ALSO STATED HE HAD NEVER ACCEPTED PARA 7 (ON TRANSFER OF OPERATIONS). SWEDISH DEL SAID HE COULD NOT ACCEPT PARA 7 BUT, IN "BURST OF GENEROSITY", AGREED TO PARA 8. DUTCH DEL REJECTED LIMITED OFFICIAL USE

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PAGE 02 OECD P 03095 05 OF 07 310120Z

PARA 8 BUT RESERVED HIS POSITION ON PARA 7 PENDING FURTHER CONSULTATIONS. UK DEL, ALTHOUGH AGREEING WITH RESERVATIONS EXPRESSED IN REGARD TO PARAS 7 AND 8, NEVERTHELESS ACCEPTED REVISED DRAFTS AND HOPED OTHER DELEGATIONS WOULD DO LIKEWISE UPON FURTHER REFLECTION. NOTED THAT PRESENT TEXTS REPRESENT COMPROMISES AND THUS WOULD BE DIFFICULT TO REOPEN.

22. CIME AGREED TO DROP BRACKETTED WORD "GOOD" IN PARA 3 ON STANDARDS. CANADIAN, WITH US SUPPORT, SUGGESTED STANDARD OF "OBJECTIVE FACTORS" IN HIRING WOULD BETTER BE REPLACED WITH "INDIVIDUAL QUALIFICATIONS". THIS REFERRED WITHOUT OBJECTION TO DRAFTING GROUP.

SCIENCE AND TECHNOLOGY

23. IN LINE WITH CORRECTED TEXT CIRCULATED BY SECRETARIAT (WHICH WAS ACCEPTED IN TOTO), GUIDELINE MODIFIED SLIGHTLY IN TWO RESPECTS: (A) BY INSERTING AFTER TECHNOLOGIES IN PARA (2) WORDS "WITH DUE REGARD TO THE PROTECTION OF INDUSTRIAL AND INTELLECTUAL PROPERTY RIGHTS"; AND (B) IN PARA 3, BY DELETING WORDS "WITHIN AN ADEQUATE MARKET AREA" AS PREVIOUSLY AGREED.

CONSULTATIONS ON GUIDELINES

24. IN EFFORT TO RESOLVE OUTSTANDING DIFFERENCES,

CHAIRMAN CIRCULATED REVISED PARA 2 WHICH HAD BEEN DRAFTED AT BONN MEETING. NEW PARA READS: BEGIN TEXT. WITHIN THESE REVIEWS, QUESTIONS OF INTERPRETATION AS WELL AS SPECIFIC ISSUES MAY BE RAISED BY MEMBER COUNTRIES. IN CONSIDERING THOSE ISSUES THE COMMITTEE SHALL DETERMINE IN EACH CASE THE PROCEDURE TO BE FOLLOWED INCLUDING THE DESIRABILITY OF INVITING ENTERPRISES TO EXPRESS THEIR VIEWS. THE REVIEWS SHALL NOT RESULT IN CONCLUSIONS BEING PASSED ON THE BEHAVIOR OF SPECIFIC ENTERPRISES. END TEXT CHAIRMAN ALSO SUGGESTED THAT IF THIS ACCEPTED, IT WOULD BE REASONABLE TO DROP WORD "GENERAL" IN PARA 1 SINCE NO ONE COULD, IN LIMITED OFFICIAL USE

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PAGE 03 OECD P 03095 05 OF 07 310120Z

ANY EVENT, SO CIRCUMSCRIBE BIAC AND TUAC VIEWS.

25. REVERSING UNDERSTANDING REACHED IN BONN, SWEDEN STATED THAT TWO MAJOR ISSUES WERE STILL UNRESOLVED A) WHO HAD RIGHT TO INITIATE CONSULTATIONS; AND B) WHO HAD RIGHT TO APPEAR BEFORE COMMITTEE AND PRESENT THEIR VIEWS ON ISSUES BEFORE IT. ON (A), SWEDEN WOULD LIKE BIAC AND TUAC TO HAVE RIGHT TO INITIATE CONSULTATIONS, BUT SWEDES COULD, IF FORCED, LIVE WITHOUT THIS PROVISION. ON (B), SWEDES STATED THAT THEY ABSOLUTELY INSISTED THAT COMPANIES MUST HAVE RIGHT TO APPEAR BEFORE COMMITTEE.

26. IN DISPEPTIC REACTION TO ONE MORE SWEDISH "WELCH" ON DEAL, U.S. DEL NOTED THAT ISSUE OF COMPANIES' RIGHT TO STATE VIEWS WAS ESSENTIALLY BOGUS, AS MNE'S HAD VARIOUS WAYS TO GET THEIR POINT OF VIEW MADE KNOWN, SHOULD THEY FEEL IT ESSENTIAL. HE POINTED OUT THAT TO

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PAGE 01 OECD P 03095 06 OF 07 310118Z

63
ACTION EUR-12

INFO OCT-01 ISO-00 AID-05 CEA-01 CIAE-00 COME-00 EB-07

EA-07 FRB-03 INR-07 IO-11 NEA-10 NSAE-00 OPIC-03

SP-02 TRSE-00 CIEP-01 LAB-04 SIL-01 OMB-01 STR-04 L-03

H-02 PA-01 PRS-01 USIA-06 OIC-02 OES-03 /098 W

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R 310139Z JAN 76

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TO SECSTATE WASH DC 0407

LIMITED OFFICIAL USE SECTION 06 OF 07 OECD PARIS 03095

HAVE COMPANIES PRESENT WOULD TEND TO TURN CONSULTATIONS INTO A UNIQUE PUBLIC/PRIVATE TRIBUNAL FOR TOTALLY UNCLEAR POLITICAL PURPOSES. CONSULTATIONS WERE ESSENTIALLY INTER-GOVERNMENTAL PROCEEDINGS AND PRESENCE OF COMPANIES AT THEIR OWN INITIATIVE WOULD BE BIZARRE STEP TOWARD SUPRANATIONAL TREATMENT OF COMPANIES WHICH U.S. AND OTHERS SIMPLY WILL NOT TAKE. GIVEN THESE FACTS, THERE WERE TWO SOLUTIONS: EITHER ACCEPTANCE OF COMPROMISE TEXT TABLED BY CHAIRMAN OR DELETION OF ENTIRE CONSULTATION SECTION, RELYING ONLY ON THE CONSULTATION REFERENCES IN THE INTRODUCTION.

27. MOST OTHER DELS, (FRG, SWISS, U.K., DENMARK, AUSTRALIA, CANADA), INDICATED THAT, WHILE NOT ENAMoured WITH COMPROMISE TEXT, THEY COULD ACCEPT IT AS MEANS OF BRIDGING DIFFERENT VIEWPOINTS. SECRETARIAT ASKED DELS TO GO BACK TO CAPITALS AND SEE IF COMPROMISE COULD BE AGREED TO.

28. OTHER POINTS: A) IN PARA 1, COUNTRIES WERE DIVIDED AS TO WHETHER OR NOT TO DELETE WORD "GENERAL"
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PAGE 02 OECD P 03095 06 OF 07 310118Z

FROM PHRASE "INVITE BIAC AND TUAC TO EXPRESS VIEWS ON GENERAL MATTERS RELATED TO GUIDELINES." (B) U.K. PROPOSED, AND RECEIVED SOME SUPPORT, THAT THERE SHOULD BE PUBLISHED AN ANNUAL REPORT ON EXPERIENCE WITH GUIDELINES AND THAT THERE SHOULD BE INCLUDED IN TEXT AN OBLIGATION TO REVIEW THE CONSULTATION PROCEDURES AS A WHOLE AFTER A PERIOD OF TIME. SWISS SAID THESE WERE NOVEL IDEAS THAT WOULD HAVE TO BE CONSIDERED CAREFULLY. (C) AUSTRALIA REQUESTED DELETION OF PARA 4 OF CONSULTATIONS SECTION

DEALING WITH INTERGOVERNMENTAL CONSULTATIONS WHEN MNE'S
SUBJECT TO CONFLICTING REQUIREMENTS, AS DEL FELT THAT
BILATERAL DISCUSSIONS WOULD THEN BE MORE APPROPRIATE.

NATIONAL TREATMENT

29. COMMITTEE REACHED GENERAL AGREEMENT ON FINAL SHAPE
OF INSTRUMENT. IN ACCORDANCE DEAL WORKED OUT IN BONN,
PARAS 5 (NONDISCRIMINATION WHERE LESS THAN NATIONAL
TREATMENT) AND PARA 12 (REFERENCE TO INTERNATIONAL LAW
AND TREATIES) WOULD BE DROPPED AND EEC CLAUSE WOULD NOT
BE INCLUDED. PARAS 9 AND 10 ON CONSULTATIONS AND
PERIODIC REVIEWS WOULD BE COMBINED IN DRAFTING GROUP.

30. U.S. ALSO PROPOSED TAKING CARE OF POTENTIAL "CALVO
CLAUSE" PROBLEM BY EITHER (A) SLIGHT MODIFICATION IN
PARA 1 INCORPORATING A REFERENCE TO INTERNATIONAL LAW OR
(B) PUTTING INTO "HAVING REGARD" PARAGRAPH OF NATIONAL
TREATMENT INSTRUMENT A REFERENCE TO "BRIDGING" PARAGRAPH
IN MNE GUIDELINES WHICH DESCRIBES GOVERNMENT OBLIGATIONS.
U.S. DEL ALSO REQUESTED SLIGHT MODIFICATION OF PARA 2
(ENTRY OF FOREIGN INVESTMENT) TO EITHER MAKE IT SUBJECT
TO INTERNATIONAL OBLIGATIONS OR ELSE INDICATE THAT
INSTRUMENT DOES NOT DEAL WITH SUBJECT. COMMITTEE RAISED
NO PROBLEMS OF SUBSTANCE WITH U.S. PROPOSALS, WHICH WILL
BE HANDLED IN DRAFTING GROUP. U.K. EXPRESSED RELUCTANCE
TO ACCEPT STRONG "SHALL" WITH REGARD TO ALL OBLIGATIONS
IN THE DECLARATION AND REQUESTED THAT AT LEAST FIRST
PARA SHOULD STATE "WILL...ACCORD" NOT "SHALL...ACCORD."
U.S. DEL SAID "NO, THANK YOU," BUT CHAIRMAN ASKED DRAFT-
ING GROUP TO MULL IT OVER.

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PAGE 03 OECD P 03095 06 OF 07 310118Z

OFFICIAL INCENTIVES AND DISINCENTIVES

31. INITIAL FOCUS OF DISCUSSIONS WAS DRAFT DECLARATION/
DECISION RE INCENTIVES AND DISINCENTIVES TABLED BY
CHAIRMAN AS COMPROMISE PROPOSAL. MAJOR CHANGES FROM
REFDOC (F) WERE IN PARA 1 (STATEMENT OF PRINCIPLE) AND
PARA 3 (CONSULTATIONS). PROPOSED LANGUAGE OF PARA 1
STATED INTENTION OF COUNTRIES PREPARING INCENTIVES OR
DISINCENTIVES FOR DIRECT INVESTMENT (I.E. ALL DIRECT
INVESTMENT) TO TAKE INTO ACCOUNT EFFECTS OF SUCH MEASURES
ON FLOWS OF INTERNATIONAL DIRECT INVESTMENT WITH VIEW
TO MINIMIZING EFFECTS ON OTHER MEMBER COUNTRIES; PARA 3
LIMITED SCOPE OF CONSULTATIONS TO INCENTIVES OR DISIN-
CENTIVES FOR INTERNATIONAL DIRECT INVESTMENT.

32. CIME CONSIDERATION OF DETAILS OF CHAIRMAN'S PRO-

POSAL QUICKLY REACHED IMPASSE WITH STATEMENTS BY (A)
FRENCH DEL THAT HE COULD ACCEPT CONSULTATIONS FORMULA
BUT WAS NOT READY TO ACCEPT BROAD GENERAL PRINCIPLE AND
(B) U.S. DEL THAT PROPOSAL WITHOUT MORE GENERAL PRINCIPLE
WAS ALL TOO PALLID VERSION OF ORIGINAL CONCEPT AND
UNACCEPTABLE AS ULTIMATE COMPROMISE.

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PAGE 01 OECD P 03095 07 OF 07 310125Z

63

ACTION EUR-12

INFO OCT-01 ISO-00 AID-05 CEA-01 CIAE-00 COME-00 EB-07

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33. AFTER EXPRESSING CONCERN ABOUT PROSPECTS FOR AGREE-
MENT IN LIGHT OF APPARENT FUNDAMENTAL DIFFERENCES, CHAIR
INITIATED EXPLORATION OF VARIOUS POSSIBLE COMPROMISE
FORMULAS INVOLVING REFERENCE TO GENERAL LANGUAGE ON
COOIWRATION IN OECD CONVENTION AND AMBIGUOUS STATEMENT
OF MEMBER COUNTRIES' WILLINGNESS TO CONSULT. ALL
ALTERNATIVES SUGGESTED WERE REJECTED BY U.S. DEL AS
UNACCEPTABLY WEAK WITH REGARD TO STATEMENT OF PRINCIPLE,
ALTHOUGH HE WELCOMED ALL EFFORTS TO DRESS UP PREAMBLE
BY PLACING PRINCIPLE IN BROADER POLITICAL CONTEXT.

34. DISCUSSION CONCLUDED WITH REQUEST FROM CHAIR THAT
ALL DELS CONSIDER FOLLOWING ADAPTATION OF HER PROPOSAL
AS BASIS FOR COMPROMISE AGREEMENT: (A) HAVING REGARD

CLAUSE REFERRING TO GROWING INTERDEPENDENCE OF OECD MEMBER COUNTRIES AND CITING EXISTING UNDERTAKINGS ON COOPERATION AND TAKING OTHER INTERESTS INTO ACCOUNT (OECD CONVENTION); (B) STATEMENT OF DESIRABILITY OF FURTHER COOPERATION ON DIRECT INVESTMENT MATTERS; (C) PARA 1 CONTAINING DECLARATION OUTLINED PARA 32-33 ABOVE, (D) PARA 2 ON TRANSPARENCY SIMILAR TO REFD0C (F), (E) PARA 3 ON CONSULTATIONS WMPPE DEFINED AS IN LIMITED OFFICIAL USE

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PAGE 02 OECD P 03095 07 OF 07 310125Z

PARA 31 ABOVE AND TO TAKE PLACE BILATERALLY OR IN APPROPRIATE OECD BODY.

OTHER BUSINESS

35. CHAIRMAN CLOSED WITH REQUEST THAT SECRETARIAT (A) REVIEW HOW CIME CONSULTATIONS WOULD BEST AVOID OVERLAP WITH OTHER OECD PROCEDURES FOR CONSULTATIONS UNDER VARIOUS AGREEMENTS AND (B) PREPARE A DRAFT REPORT TO GO TO MINISTERS ON CIME'S WORK ON PACKAGE, FOR NEXT CIME MEETING.

36. CHAIR ALSO PROPOSED, WITH GENERAL SUPPORT, THAT ALL THREE AGREEMENTS BE DECLARATIONS AND BE PRESENTED TO OECD MINISTERIAL MEETING IN ONE DOCUMENT WITH "CHAPEAU" TO BE DRAFTED BY SECRETARIAT. U.S. PRIVATELY DISCUSSED OUR DRAFT CHAPEAU WITH SWEDEN, U.K., FRG AND SECRETARIAT AND ALSO PROVIDING VOGELAAR WITH OUR TEXT. CANADIANS DID NOT OPPOSE ONE DOCUMENT BEING PRESENTED TO MINISTERS, BUT ALLUDED TO FACT THAT THIS WAS NOT LAST WORD ON SUBJECT OF HOW POSSIBLE RESERVATIONS COULD BE HANDLED.

37. JAPANESE DEL ASKED ABOUT THE POSSIBILITY OF FURTHER FORMAL BIAC CONSULTATIONS RE MNE GUIDELINES. CHAIRMAN STATED THAT SHE DID NOT FORESEE SUCH CONSULTATIONS ON A FORMAL BASIS, BUT SUGGESTED THAT GOVERNMENTS UNDERTAKE SUCH CONTACTS BILATERALLY, AS THEY DEEMED NECESSARY AND APPROPRIATE.

DATE OF NEXT MEETING

38. IT WAS AGREED THAT DRAFTING GROUP WOULD MEET FEB. 16 (9 A.M.), 17 (AND FEB. 18, IF NECESSARY). CIME WOULD CONVENE MARCH 18 AND 19 (AND MARCH 20, IF NECESSARY) TURNER

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